IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 117 OF 2007.
IN
CIVIL APPLICATION NO. 2316 OF 2006.
IN
WRIT PETITION NO.6082 OF 2006.

Bharatiya Bhavan Cooperative
Housing Society Ltd. & another. ... Applicants
Versus.
Mrs.Krishna Harinarayan Bajaj & anr. ... Respondents

Shri P.M.Pradhan with Shri V.B.Naik i/by M/s.Bhaishankar Kanga & Girdharlal for the Applicants.

Shri Sunil Purohit i/by Shri Vivek M.Sharma for the Respondent No.1.

Shri P.I.Khemani for Respondents No.2.

CORAM : ABHAY S.OKA, J.

DATED : 8th June, 2007.

P.C.:

1. The submissions of the learned Counsel appearing for the parties were heard yesterday. This Civil Application has been taken out by the Petitioners in the main Writ Petition. The Applicant No.1 is a registered Cooperative Housing Society. The second Applicant is the Chairman of the said Society. The challenge in the Writ Petition is to the Judgment and Award dated 17th July 2006 passed by the learned President of the Maharashtra State Cooperative Appellate Court at Mumbai, by which the dispute filed by the 1st Respondent under section 91 of the Maharashtra Cooperative Societies Act,

1960 was decreed. The relevant operative part of the said Judgment reads thus:

> "3. The disputant is entitled to recover an amount of Rs.46,78,562.50 from opponent-society being cost of recasting to overhead terrace of the suit flats along with simple interest at the rate of 12@ p.a. from September 2004 till realisation of the amount.
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> 4. The disputant is entitled to recover an amount of damages caused to the suit flats to the tune of Rs.40/- lakhs with simple interest at the rate of 12% p.a. from the date of dispute till realisation of the amount.
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> 5. It is hereby declared and ordered that society is not entitled to recover maintenance charges of the suit flats except charges payable to B.M.C. right from April 2001 upto December 2005."

2. On 19th September 2006 this Court issued Rule on the Writ Petition and Rule on interim relief was made returnable after two weeks. The Applicants herein had taken out Civil Application No.2316 of 2006 for grant of

interim relief. The said application was disposed of by order dated 20th October 2006. The said order records that a sum of Rs.60 lakhs of the 1st Applicant was already attached by the Sheriff of Mumbai. This Court while disposing of the Application observed that there will be no difficulty in releasing a sum of Rs.50 lakhs in favour of the first Respondent out of the said sum of Rs.60 lakhs attached by the Sheriff. While passing the said order, this Court observed that the release of Rs.50 lakhs or any additional amount shall be subject to regular procedure and conditions regarding the safeguards to be taken while disbursing the amount in favour of the decree-holder/1st Respondent. This Court further observed that the sum of Rs.10 lakhs out of the amount attached shall not be released in favour of the 1st Respondent for a period of 8 weeks from that date subject to the 1st Applicant depositing a sum of Rs.20 lakhs within the said period of eight weeks. It was observed that in case the sum of Rs.20 lakhs was deposited in this Court, adding the sum of Rs.10 lakhs to the sum of Rs.20 lakhs, the total amount of Rs.30 lakhs shall be invested in any nationalised Bank and the deposit will be subject to the further orders which may be passed in the Writ Petition. It is not in dispute that the Applicants have deposited a sum of Rs.20 lakhs within the time stipulated by this Court and accordingly a sum of Rs.30 lakhs stands invested in the nationalised

bank. The same application was again moved by the Applicant before this Court on 14th December 2006 for seeking clarification of the order dated 20th October 2006. This Court clarified the earlier order by saying that there will be a limited stay to the execution of the Award of the Cooperative Appellate Court in the nature of permitting the Applicant to operate the Bank Account. However, attachment of the properties of the 1st Applicant was continued. This Court put further constraints by directing that the 1st Respondent should not proceed with the sale of the attached property. The Applicants were directed not to cause any change in the status-quo in relation to the attached property without the prior permission of the Court. This Court by the said order permitted the Applicants to operate the Bank Account.

3. There are two prayers in this Civil Application. The first prayer is for seeking a direction against the 1st Respondents to give a security/surety in the nature of a Bank Guarantee of the nationalised bank for the sum of Rs.50 lakhs. The second prayer is for lifting the attachment levied by the Sheriff of Mumbai.

4. The learned Counsel appearing for the Applicants contended that as per the Award impugned in the Writ Petition over and above the sum of Rs.80,00,000/- which

is already secured, a further sum of Rs.40,85,033/- is payable by the Applicants. He states that the Applicants are ready and willing to deposit the said amount in this Court within a period of two weeks from today. He submitted that thus the entire balance decretal amount will be deposited in this court within a period of two weeks from today. He submitted that as the entire decretal amount will be before the Court, the attachment of the properties may be raised. He submitted that the Sheriff has permitted the 1st Respondent to withdraw a sum of Rs.50,00,000/- without providing for necessary safeguards. He submitted that adequate security ought to have been taken by the Sheriff, so that in case the Applicants succeed in the Writ Petition, the amount can be brought back.

5. The learned Counsel appearing for the 1st Respondent submitted that this Court by an order dated 20th October 2006 has permitted unconditional withdrawal of the sum of Rs.50 lakhs. He pointed out that the said order was passed on an application for stay made by the Applicants. He submitted that the last part of the said order which provides for the release of Rs.50 lakhs subject to regular procedure and conditions regarding safeguard to be taken while disbursing the amount in favour of the 1st Respondent refers to the procedure followed by the office of the Sheriff to ensure that the

amount is paid to the proper person after due identification of the said person. He submitted that "the procedure and conditions" referred to in the said order cannot be read to mean that the Sheriff should have taken a security for the said amount of Rs.50 lakhs. He submitted that the 1st Respondent was permitted to carry out repairs under the orders of the Court after the 1st Respondent obtained permission of the local authority to carry out the repairs. He submitted that the expenditure of more than Rs.46 lakhs was incurred by the 1st Respondent on repairs and as the said amount was not reimbursed, the 1st Respondent was required to file a dispute before the Cooperative Court for recovery of the said amount. He submitted that the Applicants moved the same learned Judge for clarification of the order dated 20th October 2006 and no clarification was made on this aspect by the same learned Judge. He, therefore, submitted that in the light of the orders dated 20th October 2006 and 14th December 2006, now the 1st Respondent cannot be directed to furnish bank guarantee or security. Without prejudice to the aforesaid contentions, he submitted that the flat of the 1st Respondent is worth more than Rs.10 crores and the said flat will be kept unalienated so that the amount of Rs.50,00,000/- is more than secured.

6. I have considered the submissions made by the learned Counsel appearing for the parties. By order dated 14th December 2006 this Court clarified its earlier order dated 20th October 2006. This Court clarified that there cannot be any stay of the attachment of the properties of the 1st Applicant and the said attachment will continue subject to condition that the 1st Respondent will not proceed to sell the attached properties. This was an order made at the stage when out of the decretal amount, a sum of Rs.80 lakhs was deposited by the 1st Applicant. Today the Applicants have come before this Court with a case that they are ready and willing to deposit the entire balance amount due and payable as per the impugned Award which is the subject matter of challenge in the writ petition. As stated earlier, according to the Applicant a further sum of Rs.40,85,033/- is payable as of today under the impugned Award of the Cooperative Appellate Court. According to the 1st Respondent, the balance decretal amount payable as on 30th June 2007 is Rs.43,12,057.65 ps. The Applicants have offered to deposit a lumpsum amount of Rs.41 lakhs in this Court. If the entire amount due and payable by the Applicants under the impugned Award is deposited in this Court, the very object of levying the attachment of the properties of the Applicant will not survive. Therefore, the attachment levied by the Sheriff can be ordered to be

vacated provided the entire balance amount due and payable as of today is deposited by the Applicants in this Court.

7. The willingness shown by the Applicants to deposit the entire amount due and payable as per the impugned Award is certainly a major change which is brought about after Civil Application No.2316 of 2006 was disposed of. This Court while granting a limited interim relief never directed the Applicants to deposit the entire amount due and payable as per the Award. However, the Applicants themselves have come forward to deposit the entire amount. It is true that there is no specific direction issued by this Court to the Respondent No.1 to give Bank Guarantee or security for the sum of Rs.50 lakhs. The order refers to the safeguards being taken by the Sheriff while releasing the amount. Now the entire amount is due and payable under the impugned Judgment and Award has been offered to be deposited by the Applicants. Considering all these factors though the 1st Respondent cannot be directed to furnish a bank guarantee for the amount of Rs.50,00,000/-, certainly a security in the sum of Rs.50 lakhs will have to be furnished by the 1st Respondent. The security will have to be furnished to the satisfaction of the Registrar, Judicial-I of this Court. It will be open for the 1st Respondent to offer a

security of her flat. If such an offer is made, the Registrar, Judicial-I is bound to consider the same in accordance with law.

8. The learned Counsel appearing for the 1st Respondent submitted that the 1st Respondent may be permitted to withdraw the entire balance amount which may be deposited by the Applicant. That order cannot passed today as the earlier amount of Rs.50 lakhs withdrawn by the 1st Respondent has not been secured. As and when the balance amount is deposited by the Applicants, for the time being, the same shall be invested in a fixed deposit in any nationalised bank for a period of one year and after the 1st Respondent furnishes security for the sum of Rs.50 lakhs as directed by this Court, it will be open for the 1st Respondent to take out a separate Application seeking permission to withdraw the balance amount deposited by the Applicants. The said Application will be considered by this Court in accordance with law as and when it is filed by the 1st Respondent.

9. The next point is as to how much is the balance amount payable as per the impugned Award. To avoid any further controversy, the Applicants will have to deposit a sum of Rs.43 lakhs as a condition for vacating the attachment. The learned Counsel for the Applicants has

stated that the Applicants will be in a position to deposit the said amount within two weeks from today.

10. Hence the Civil Application is disposed of by the following order:

(i) The 1st Respondent is directed to furnish a security for the sum of Rs.50 lakhs to the satisfaction of the Registrar, Judicial-I of this Court. It will be open for the 1st Respondent to offer security of his own flat. The Registrar, Judicial-I, will consider the said offer, if made by the 1st Respondent. The security for the sum of Rs.50 lakhs shall be furnished by the 1st Respondent within a period of four months from today.

(ii) If the Applicants deposit a sum of Rs.43 lakhs in this Court within a period of two weeks from today, the attachment of the properties of the Applicants made by the Sheriff will stand vacated. The Registry will accept the deposit of the sum of Rs.43 lakhs on production of an authenticated copy of this order.

(iii) It is obvious that the deposit of the said amount of Rs.43 lakhs in this Court will be without prejudice to the rights and contentions of the Applicants and will be subject to the final outcome of the petition.

(iv) For the time being, the amount of Rs.43 lakhs, if deposited by the Applicants, will
be invested by the Registry in fixed deposit in a Nationalised Bank for a period of one year.

(v) After the 1st Respondent furnishes security in the sum of Rs.50 lakhs as directed by this Court, it will be open for the 1st Respondent to make an application for seeking permission to withdraw the balance amount deposited by the Applicants. If such an Application is made the same will be decided in accordance with law.

(vi) Civil Application is disposed of in the above terms.

Judge.